

FORM 1.997. CIVIL COVER SHEET

The civil cover sheet and the information contained in it neither replace nor supplement the filing and service of pleadings or other documents as required by law. This form must be filed by the plaintiff or petitioner for the use of the Clerk of Court for the purpose of reporting judicial workload data pursuant to section 25.075, Florida Statutes. (See instructions for completion.)

I. CASE STYLE

IN THE CIRCUIT COURT OF THE SEVENTEENTH JUDICIAL CIRCUIT,
IN AND FOR BROWARD COUNTY, FLORIDA

Case No.: _____

Judge: _____

Edgar Monserratt as PR of Estate of E.M. Martinez

Plaintiff

vs.

Tesla, Inc., James Constantino

Defendant

II. TYPE OF CASE

- ☐ Condominium
- ☐ Contracts and indebtedness
- ☐ Eminent domain
- ☐ Auto negligence
- ☒ Negligence – other
 - ☐ Business governance
 - ☐ Business torts
 - ☐ Environmental/Toxic tort
 - ☐ Third party indemnification
 - ☐ Construction defect
 - ☐ Mass tort
 - ☐ Negligent security
 - ☐ Nursing home negligence
 - ☐ Premises liability – commercial
 - ☐ Premises liability – residential
- ☐ Products liability
- ☐ Real Property/Mortgage foreclosure
 - ☐ Commercial foreclosure \$0 - \$50,000
 - ☐ Commercial foreclosure \$50,001 - \$249,999
 - ☐ Commercial foreclosure \$250,000 or more
 - ☐ Homestead residential foreclosure \$0 – 50,000
 - ☐ Homestead residential foreclosure \$50,001 - \$249,999
 - ☐ Homestead residential foreclosure \$250,000 or more
 - ☐ Non-homestead residential foreclosure \$0 - \$50,000
 - ☐ Non-homestead residential foreclosure \$50,001 - \$249,999

- ☐ Non-homestead residential foreclosure \$250,00 or more
- ☐ Other real property actions \$0 - \$50,000
- ☐ Other real property actions \$50,001 - \$249,999
- ☐ Other real property actions \$250,000 or more
- ☐ Professional malpractice
 - ☐ Malpractice – business
 - ☐ Malpractice – medical
 - ☐ Malpractice – other professional
- ☐ Other
 - ☐ Antitrust/Trade Regulation
 - ☐ Business Transaction
 - ☐ Circuit Civil - Not Applicable
 - ☐ Constitutional challenge-statute or ordinance
 - ☐ Constitutional challenge-proposed amendment
 - ☐ Corporate Trusts
 - ☐ Discrimination-employment or other
 - ☐ Insurance claims
 - ☐ Intellectual property
 - ☐ Libel/Slander
 - ☐ Shareholder derivative action
 - ☐ Securities litigation
 - ☐ Trade secrets
 - ☐ Trust litigation

COMPLEX BUSINESS COURT

This action is appropriate for assignment to Complex Business Court as delineated and mandated by the Administrative Order. Yes ☐ No ☒

III. REMEDIES SOUGHT (check all that apply):

- ☒ Monetary;
- ☐ Non-monetary declaratory or injunctive relief;
- ☐ Punitive

IV. NUMBER OF CAUSES OF ACTION: ()
(Specify)

3

V. IS THIS CASE A CLASS ACTION LAWSUIT?

- ☐ Yes
- ☒ No

VI. HAS NOTICE OF ANY KNOWN RELATED CASE BEEN FILED?

- ☒ No
- ☐ Yes – If “yes” list all related cases by name, case number and court:

VII. IS JURY TRIAL DEMANDED IN COMPLAINT?

- ☒ Yes
- ☐ No

I CERTIFY that the information I have provided in this cover sheet is accurate to the best of my knowledge and belief, and that I have read and will comply with the requirements of Florida Rule of Judicial Administration 2.425.

Signature s/ Zane Berg FL Bar No.: 91317
Attorney or party

(Bar number, if attorney)

Zane Berg 01/08/2019
(Type or print name)

Date

IN THE CIRCUIT COURT OF THE
17TH JUDICIAL CIRCUIT IN AND
FOR BROWARD COUNTY, FLORIDA

CASE NO.:

EDGAR MONSERRATT, as Personal
Representative of THE ESTATE OF
EDGAR MONSERRATT MARTINEZ,
Deceased,

Plaintiff,

v.

TESLA, INC. a/k/a TESLA FLORIDA,
INC. and JAMES CONSTANTINO,

Defendants.

COMPLAINT

COMES NOW the Plaintiff, EDGAR MONSERRATT, as Personal Representative of the ESTATE OF EDGAR MONSERRATT MARTINEZ, Deceased, by and through his undersigned attorneys, and sues the Defendants, TESLA, INC. a/k/a TESLA FLORIDA, INC. and JAMES CONSTANTINO, as grounds therefore would state:

1. This is an action for damages that exceeds Fifteen Thousand Dollars (\$15,000.00), exclusive of costs and fees.

2. At all times alleged herein the Plaintiff, EDGAR MONSERRATT has been or will be duly appointed as the personal representative of THE ESTATE OF EDGAR MONSERRATT MARTINEZ, and litigates this wrongful death action on behalf of the ESTATE OF EDGAR MONSERRATT MARTINEZ and on behalf of all survivors.

3. EDGAR MONSERRATT MARTINEZ, died on May 8, 2018 as a result of injuries suffered in an automobile crash in the 1300 block of Seabreeze Boulevard in Fort Lauderdale, Broward County, Florida caused by the Defendants alleged in this Complaint.

3. At the time of the death of EDGAR MONSERRATT MARTINEZ was 18 years old and was not married and had no children.

4. EDGAR MONSERRATT MARTINEZ is survived by his natural parents, EDGAR MONSERRATT and ESPERANZA MARTINEZ DE MONSERRATT, who are survivors under the Florida Wrongful Death Act.

5. At all times material to this action, the Defendant, TESLA, INC. a/k/a TESLA FLORIDA, INC. (hereinafter referred to as “TESLA”), was a foreign corporation licensed and authorized to do business in the State of Florida.

6. At all times hereinafter mentioned and at the time of the incident complained of, the Defendant, TESLA, had an office for the transaction of its customary business in Broward County, Florida, had agents and other representatives in Broward County, Florida, and was actually doing business in Broward County, Florida by virtue of its designing, assembling, manufacturing, and/or shipping automobiles into Broward County, Florida.

7. At all times hereinafter mentioned and at the time of the incident complained of, the Defendant, TESLA, was in the business of designing, testing, inspecting, manufacturing, distributing, selling, maintaining, repairing and otherwise placing into the stream of commerce, and causing same to come into the State of Florida, certain automobiles, including a certain specific automobile designated and described as a 2014 Tesla Model S, VIN: 5YJSA1H24EFP62693 (Hereinafter described as the “Vehicle”).

8. At all times material to this action Defendant, JOSEPH CONSTANTINO, was an employee and agent of TESLA and acting in the full course and scope of his responsibilities for TESLA.

9. At all times hereinafter mentioned and at the time of the incident complained of, JOSEPH CONSTANTINO was sui juris and a resident of Broward County, Florida.

10. At all times material to this action, JAMES B. RILEY was a registered owner of the Vehicle.

11. At all times material to this action, the Vehicle was kept and maintained at the home of JAMES B. RILEY and JENNY B. RILEY and they maintained custody, possession, and control of the Vehicle.

12. BARRETT RILEY, deceased, was the son of JAMES B. RILEY and JENNY B. RILEY.

13. That on May 8, 2018 the decedent, EDGAR MONSERRATT MARTINEZ, was the front seat passenger in the Vehicle which was then operated by BARRETT RILEY southbound in the 1300 block of Seabreeze Boulevard, in Fort Lauderdale, Florida.

14. That at that time and place, BARRETT RILEY lost control of the automobile, resulting in the Vehicle striking a wall on the west side of the road. The Vehicle then re-entered the roadway, mounted the curb on the east side of the street, and struck a metal light pole and wall. The Vehicle then erupted in flames.

15. EDGAR MONSERRATT MARTINEZ perished as a result of injuries he sustained in the crash.

COUNT I
MONSERRATT v. TESLA and CONSTANTINO
NEGLIGENCE/RESPONDENT SUPERIOR

The Plaintiff, EDGAR MONSERRATT, as Personal Representative of THE ESTATE OF EDGAR MONSERRATT MARTINEZ, Deceased, realleges each and every allegation contained in paragraphs 1 through 15, and, by reference, further states:

16. The Vehicle was traveling at a speed in excess of 116 mph when BARRETT RILEY lost control of the vehicle immediately before the crash.

17. Prior to May 8, 2018, BARRETT RILEY had a history of negligent operation of motor vehicles, including speeding and, in particular, speeding in the Tesla Model S, which endangered his passengers and the general public.

18. On March 3, 2018, approximately two months prior to the automobile crash, BARRETT RILEY, was clocked at 112 mph on a Florida highway and ticketed for such.

19. As a result of BARRETT RILEY's traffic citation, his parents, JAMES B. RILEY and/or JENNY B. RILEY, sought to limit the top speed of the Vehicle in an effort to improve its safety and safe operation for the benefit of their son and any passengers in the Vehicle.

20. JAMES B. RILEY and/or JENNY B. RILEY then requested that Defendant, TESLA install a speed limiter/governor on the Vehicle which would limit its top speed to 85 mph.

21. On or about March 6, 2018 the Defendant, TESLA, through its employees or agents, installed the 85 mph speed limiter/governor on the Vehicle limiting any driver to going a maximum of 85 mph.

22. Between March 29, 2018 and April 3, 2018, while the Vehicle was in for service at Defendant TESLA's Bahia Beach, Broward County service center, Defendant TESLA, through its

agent CONSTANTINO, improperly removed the 85 mph speed limiter/governor without the permission and consent of JAMES B. RILEY or JENNY B. RILEY.

23. The 85 mph speed limiter/governor was never reinstalled prior to the May 8, 2018 crash.

24. Neither JAMES B. RILEY nor JENNY B. RILEY were ever made aware by TESLA that the 85 mph speed limiter/governor had been removed from the Vehicle until after the May 8, 2018 crash.

25. Had JAMES B. RILEY or JENNY B. RILEY been made aware of the fact that the 85 mph speed limiter/governor had been improperly removed, they would not have permitted their son, BARRETT RILEY, to operate the vehicle.

26. The Defendants, TESLA, by and through its agent, CONSTANTINO, and COSANTINO individually, owed a duty of care not to remove the speed limiter/governor in the Vehicle in any manner which could potentially affect its safe operation, or the safety of any passengers who may ride within it.

27. The Defendants, TESLA and CONSANTINO, breached their duties of care by negligently removing the 85 mph speed limiter/governor and thereby endangering any passengers who may have ridden in the Vehicle, including the decedent, EDGAR MONSERRATT MARTINEZ.

28. Had the 85 mph speed limiter/governor not been improperly removed by Defendants, TESLA and CONSANTINO, the Vehicle would not have exceeded 85 mph and BARRET RILEY would not have lost control of the vehicle.

29. Had the 85 mph speed limiter/governor not been improperly removed by the Defendants, TESLA and its agent, CONSTANTINO, the May 8, 2018 crash would not have occurred and EDGAR MONSERRATT MARTINEZ would not have died.

30. As a direct and proximate cause of the negligence of TESLA and its agent, CONSTANTINO, the ESTATE OF EDGAR MONSERRATT MARTINEZ, deceased, suffered the following damages and EDGAR MONSERRATT as personal representative of the ESTATE OF EDGAR MONSERRATT MARTINEZ, deceased, seeks the following damages on behalf of the ESTATE OF EDGAR MONSERRATT MARTINEZ:

- a) Funeral and burial expenses,
- b) Loss of net accumulations that would have been available to the Estate had the decedent lived for the duration of his natural life.

31. As a direct and proximate cause of the negligence of Defendant TESLA and its agent, CONSTANTINO, the ESTATE OF EDGAR MONSERRATT MARTINEZ, deceased, suffered the following damages and EDGAR MONSERRATT as personal representative of the ESTATE OF EDGAR MONSERRATT MARTINEZ, deceased, seeks the following damages on behalf of EDGAR MONSERRATT as surviving father of EDGAR MONSERRATT MARTINEZ:

- a) EDGAR MONSERRATT's mental pain and suffering, mental anguish, inconvenience and loss of his son's companionship and affection from the date of his death up and through EDGAR MONSERRATT's normal life expectancy.

32. As a direct and proximate cause of the negligence of Defendant, TESLA, and its agent, CONSTANTINO, the ESTATE OF EDGAR MONSERRATT MARTINEZ, deceased, suffered the following damages and EDGAR MONSERRATT as personal representative of the ESTATE OF EDGAR MONSERRATT MARTINEZ, deceased, seeks the following damages on

behalf of ESPERANZA MARTINEZ DE MONSERRATT as surviving mother of EDGAR MONSERRATT MARTINEZ:

- a) ESPERANZA MARTINEZ DE MONSERRATT's mental pain and suffering, mental anguish, inconvenience and loss of her son's companionship and affection from the date of his death up and through ESPERANZA MARTINEZ DE MONSERRATT's normal life expectancy.

WHEREFORE, the Plaintiff, EDGAR MONSERRATT, as Personal Representative of the ESTATE OF EDGAR MONSERRATT MARTINEZ, Deceased, demands judgment against the Defendant, TESLA, INC. a/k/a TESLA FLORIDA, INC., for compensatory damages together with post-judgment interest and taxable costs incurred in this action.

COUNT II
MONSERRATT v. TESLA
STRICT LIABILITY IN TORT

The Plaintiff, EDGAR MONSERRATT, as Personal Representative of THE ESTATE OF EDGAR MONSERRATT MARTINEZ, Deceased, realleges each and every allegation contained in paragraphs 1 through 15, and, by reference, further states:

33. The Vehicle as hereinabove described was designed, manufactured, assembled, serviced, repaired, placed within the stream of commerce and market place, and/or allowed to be used therein by the said Defendant, TESLA.

34. The Vehicle as previously described was defective when it left the possession of the Defendant, TESLA, and was in a condition that was unreasonably dangerous to foreseeable users, and said Vehicle was expected to and did reach foreseeable users without substantial change affecting its condition.

35. The Vehicle as hereinabove described was defective and unreasonably dangerous at the time it was so designed, manufactured, assembled, sold, distributed, marketed, promoted, placed within the stream of commerce and market place, and allowed to be used therein, in the ways set forth herein:

- a) The Vehicle was not crashworthy;
- b) The Vehicle's batteries were inherently unstable and subject to explosion and spontaneous fire;
- c) The Vehicle's batteries were inadequately protected and shielded; to wit: the battery pack of the Tesla Model S was not treated with an intumescent material to protect and provide protection from the propagation of thermal runaway from one cell to adjacent cells;
- d) The Vehicle had inadequate measures to prevent a post-collision fire; to wit: the battery pack of the Tesla Model S was not treated with an intumescent material to protect and provide protection from the propagation of thermal runaway from one cell to adjacent cells;
- e) The Vehicle had inadequate measures to contain or extinguish any fire;
- f) The Vehicle was prone to extremely intense fires incapable of being timely extinguished;
- g) Failed to contain a warning to end users and their passengers of the defective and unreasonably dangerous condition of the Vehicle;
- h) Was otherwise defective in ways which will be demonstrated by the evidence adduced during discovery.

36. The aforesaid defects existed at the time of the design, manufacture, and assembly of

said Vehicle, continued to remain an integral characteristic of said vehicle at the time it was sold, distributed, placed within the stream of commerce and market place, and allowed to be used therein by the Defendant TESLA and remained as such up to and including the time that EDGAR MONSERRATT MARTINEZ perished by said defects, and, as a result, the Defendant, TESLA, is strictly liable to the Plaintiff.

37. The decedent, EDGAR MONSERRATT MARTINEZ, was unaware of the aforesaid defects and dangerousness of said product, which made such product unsafe for its intended and foreseeable use, nor were such defects apparent by reasonable inspection.

38. As a direct and proximate cause of the defects in the Vehicle, the ESTATE OF EDGAR MONSERRATT MARTINEZ, deceased, suffered the following damages and EDGAR MONSERRATT as personal representative of the ESTATE OF EDGAR MONSERRATT MARTINEZ, deceased, seeks the following damages on behalf of the ESTATE OF EDGAR MONSERRATT MARTINEZ:

- a) Funeral and burial expenses,
- b) Loss of net accumulations that would have been available to the Estate had the decedent lived for the duration of his natural life.

39. As a direct and proximate cause of the defects in the Vehicle, the ESTATE OF EDGAR MONSERRATT MARTINEZ, deceased, suffered the following damages and EDGAR MONSERRATT, as personal representative of the ESTATE OF EDGAR MONSERRATT MARTINEZ, deceased, seeks the following damages on behalf of EDGAR MONSERRATT as surviving father of EDGAR MONSERRATT MARTINEZ:

- a) EDGAR MONSERRATT's mental pain and suffering, mental anguish, inconvenience and loss of his son's companionship and affection from the date of his death up and

through EDGAR MONSERRATT's normal life expectancy.

40. As a direct and proximate cause of the defects in the Vehicle, the ESTATE OF EDGAR MONSERRATT MARTINEZ, deceased, suffered the following damages and EDGAR MONSERRATT, as personal representative of the ESTATE OF EDGAR MONSERRATT MARTINEZ, deceased, seeks the following damages on behalf of ESPERANZA MARTINEZ DE MONSERRATT as surviving mother of EDGAR MONSERRATT MARTINEZ:

- a) ESPERANZA MARTINEZ DE MONSERRATT's mental pain and suffering, mental anguish, inconvenience and loss of her son's companionship and affection from the date of his death up and through ESPERANZA MARTINEZ DE MONSERRATT's normal life expectancy.

WHEREFORE, the Plaintiff, EDGAR MONSERRATT, as Personal Representative of the ESTATE OF EDGAR MONSERRATT MARTINEZ, Deceased, demands judgment against the Defendant, TESLA, INC. a/k/a TESLA FLORIDA, INC., for compensatory damages together with post-judgment interest and taxable costs incurred in this action.

COUNT III
MONSERRATT v. TESLA
NEGLIGENCE – FAILURE TO WARN

The Plaintiff, EDGAR MONSERRATT, as Personal Representative of THE ESTATE OF EDGAR MONSERRATT MARTINEZ, Deceased, realleges each and every allegation contained in paragraphs 1 through 15, and, by reference, further states:

41. At all times relevant herein, it was the duty of Defendant TESLA to exercise due care in the design, manufacture, assembly, distribution, and/or sale of the Vehicle, and in placing such Vehicle into the stream of commerce, so that such Vehicle would be reasonably safe for its

intended use and for other uses that were foreseeably probable.

42. At all times relevant herein, it was the duty of Defendant TESLA to ensure that the Vehicle that it placed in the stream of commerce was safe for use by its intended users and those persons who may foreseeably come into close proximity to it, such as the decedent, EDGAR MONSERRATT MARTINEZ.

43. At all times hereinafter mentioned and at the time of the incident complained of, Defendant TESLA failed to warn that the vehicle was defective in the manners and ways set forth herein:

- a) The Vehicle was not crashworthy;
- b) The Vehicle's batteries were inherently unstable and subject to explosion and spontaneous fire;
- c) The Vehicle's batteries were inadequately protected and shielded; to wit: the battery pack of the Tesla Model S was not treated with an intumescent material to protect and provide protection from the propagation of thermal runaway from one cell to adjacent cells;
- d) The Vehicle had inadequate measures to prevent a post-collision fire; to wit: the battery pack of the Tesla Model S was not treated with an intumescent material to protect and provide protection from the propagation of thermal runaway from one cell to adjacent cells;
- e) The Vehicle was prone to extremely intense fires incapable of being timely extinguished;
- f) Defendant TESLA failed to warn anyone of the defective and unreasonably dangerous condition of the Vehicle;

g) The Vehicle was otherwise defective in ways which will be demonstrated by the evidence adduced during discovery.

44. Defendant TESLA designed, manufactured, assembled, distributed, sold and placed within the stream of commerce and market place the Vehicle, as hereinabove specifically described, the Vehicle intended to be used by the ultimate consumer, and TESLA knew, or with the exercise of reasonable care should have known, that the said Vehicle was negligently designed, manufactured and assembled.

45. Defendant TESLA negligently failed to give proper warnings to any purchaser or user of the Vehicle concerning its dangerous condition and propensities, or the fact that the Vehicle was unreasonably dangerous during use, and, as such, could cause injury to those persons in close proximity thereto.

46. Defendant TESLA negligently designed, manufactured, assembled, marketed, sold, and/or allowed to be used in the market place the aforesaid Vehicle without warnings as to its dangers and as to its proper use, and knew or should have known the aforesaid Vehicle, when used within the purposes for which it was designed, manufactured, and intended, was unreasonably dangerous and hazardous to those persons in close proximity thereto.

47. Defendant TESLA negligently failed to warn the consumer, user, operator, and those in the vicinity of said Vehicle of its extremely dangerous and hazardous characteristics, propensities, and defects, and, after placing said Vehicle on the market and allowing its use therein, failed to recall the said Vehicle from the market, said recall being necessitated because of said unreasonably dangerous and hazardous defects contained therein.

48. The decedent, EDGAR MONSERRATT MARTINEZ, was unaware of the aforesaid defects and dangerousness of said product which made such product unsafe for its intended and

foreseeable use, nor were such defects apparent by reasonable inspection.

49. As a direct and proximate cause of the negligence of Defendant ,TESLA, the ESTATE OF EDGAR MONSERRATT MARTINEZ, deceased, suffered the following damages and EDGAR MONSERRATT as personal representative of the ESTATE OF EDGAR MONSERRATT MARTINEZ, deceased, seeks the following damages on behalf of the ESTATE OF EDGAR MONSERRATT MARTINEZ:

- a) Funeral and burial expenses,
- b) Loss of net accumulations that would have been available to the Estate had the decedent lived for the duration of his natural life.

50. As a direct and proximate cause of the negligence of Defendant, TESLA, the ESTATE OF EDGAR MONSERRATT MARTINEZ, deceased, suffered the following damages and EDGAR MONSERRATT as personal representative of the ESTATE OF EDGAR MONSERRATT MARTINEZ, deceased, seeks the following damages on behalf of EDGAR MONSERRATT as surviving father of EDGAR MONSERRATT MARTINEZ:

- a) EDGAR MONSERRATT's mental pain and suffering, mental anguish, inconvenience and loss of his son's companionship and affection from the date of his death up and through EDGAR MONSERRATT's normal life expectancy.

51. As a direct cause of the negligence of Defendant, TESLA, as afore alleged, the ESTATE OF EDGAR MONSERRATT MARTINEZ, deceased, suffered the following damages and EDGAR MONSERRATT as personal representative of the ESTATE OF EDGAR MONSERRATT MARTINEZ, deceased, seeks the following damages on behalf of ESPERANZA MARTINEZ DE MONSERRATT as surviving mother of EDGAR MONSERRATT MARTINEZ:

- a) ESPERANZA MARTINEZ DE MONSERRATT's mental pain and suffering, mental

anguish, inconvenience and loss of her son's companionship and affection from the date of his death up and through ESPERANZA MARTINEZ DE MONSERRATT's normal life expectancy.

WHEREFORE, the Plaintiff, EDGAR MONSERRATT, as Personal Representative of the ESTATE OF EDGAR MONSERRATT MARTINEZ, Deceased, demands judgment against the Defendant, TESLA, INC. a/k/a TESLA FLORIDA, INC., for compensatory damages together with post-judgment interest and taxable costs incurred in this action.

[Remainder of Page Intentionally Blank]

DEMAND FOR JURY TRIAL

The Plaintiff in the above styled cause hereby demands a trial by jury of all of the issues triable by right.

DATED this 8th day of January, 2019.

Respectfully submitted,

/s/ Scott P. Schlesinger
SCHLESINGER LAW OFFICES, P.A.
Scott P. Schlesinger, Esq.
Florida Bar No.: 444952
scott@schlesingerlaw.com
Jonathan R. Gdanski, Esq.
Florida Bar No.: 0032097
jonathan@schlesingerlaw.com
Zane Berg, Esq.
Florida Bar No.: 91317
zane@schlesingerlaw.com
1212 S.E. 3rd Avenue
Fort Lauderdale, FL 33316
Telephone: 954.467.8800
Facsimile: 954.320.9509

-and-

/s/ Philip Harnett Corboy, Jr.
CORBOY & DEMETRIO, P.C.
Philip Harnett Corboy, Jr. — *Pro-Hac Vice anticipated*
Illinois Bar No.: 3121633
fhc@corboydemetrio.com
33 N. Dearborn Street
Chicago, IL 60602
Telephone: (312) 346-3191

ATTORNEYS FOR PLAINTIFF